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August 4, 2017

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
*filed electronically*

Re: *Modernization of Media Regulation*, MB Docket No. 17-105, Reply to  
Comments Proposing Changes to the FCC's Rules Concerning Station Ownership

*2014 Quadrennial Regulatory Review*, MB Dockets No. 14-50, 07-294

*Revision of the Public Notice Requirements of Section 73.3580*, Docket No. 05-6

Dear Ms. Dortch,

Prometheus Radio Project, by its Counsel Institute for Public Representation, along with undersigned organizations, United Church of Christ, OC Inc. (UCC), Media Alliance, Common Cause, Communications Workers of America, National Association of Broadcast Employees and Technicians (NABET-CWA), Public Knowledge, Future of Music Coalition, and the American Civil Liberties Union, strongly oppose proposals to repeal or relax the requirement that stations file biennial ownership reports known as Form 323s. The information in these reports is essential for the Commission to carry out its statutory responsibilities. Further, we raise concerns about certain other proposals relating to the attribution rules and public notice of license renewals and transfers.

### **A. Biennial Ownership Reports (Form 323) Provide Essential Information**

Ownership reports are essential to the Commission's ability to ensure that stations meet their statutory obligations to serve the public interest and to enforce its rules. Thus, the Commission should reject the joint proposal of CBS, Disney, Fox and Univision ("Networks"), to exempt publicly traded corporations from having to file biennial reports at all. Networks at 3. The Commission should also reject the proposals to reduce the frequency with which the ownership forms are filed. National Association of Broadcasters ("NAB") at 16, for example, asks that stations be required to file ownership reports when a license is obtained or transferred. Jack Goodman at 2 and Public Broadcasters at 14 suggest that ownership reports should be filed every four years instead of two.

The FCC used to require that broadcast stations file Form 323 ownership reports annually. In an effort to reduce burdens on licensees, the Commission changed it to every two years in 1998. The Commission found that this change "would not adversely affect the Commission's ability to monitor ownership of commercial and noncommercial educational broadcast stations and compliance with our multiple ownership limitations and the alien ownership and prior consent provisions of Section 310 of the Communications Act." *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd. 23056, 23094 (1998). At the same time, the Commission amended FCC Form 323 to require owners to report their race and gender. The Commission found this information was needed to determine the extent of station ownership by women and minorities and to enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and women to own broadcast facilities. *Id.* at 23095.

Because the FCC needs Form 323 data both to monitor compliance with its rules and to foster ownership diversity, it cannot exempt publicly traded corporations from filing. The information in Form 323 is not the same as that filed with the SEC. But even if it were the same, it is important for the FCC and the public to have the ownership data for all stations that it licenses in a single, searchable database.

Collecting of race and gender data is particularly important. In the course of the 2006 Quadrennial Review, it was discovered that many stations did not file reports, or if they did, the reports were often incomplete or inaccurate. Consequently, the Commission lacked sufficient data to analyze the impact of its ownership limits and policies on opportunities for minorities and women to own broadcast stations. The Commission tried to address these problems in 2009, when it made significant changes designed to ensure that the data collected was complete, accurate, verifiable and accessible in a searchable electronic database. *Promoting Diversification in the Broadcasting Services*, 24 FCC Rcd 5896 (2009). These changes included the adoption of a uniform filing date for all stations. Since then, stations have filed Form 323s for 2009, 2011, 2013, and 2015, and the next ones are due at the end of 2017.

In its recently released report on the 2015 ownership data, the Media Bureau explained the importance of a uniform filing date, "The data contained in these reports are 'snapshots' of the status of minority and female ownership in the broadcast industry and are part of a planned

series of biennial “snapshots” that can be used for trend analysis.”<sup>1</sup> This same Report found Hispanic/Latino persons, racial minorities, and women continued to control only small numbers of broadcast stations.<sup>2</sup>

Not only is regular reporting important, but the 2017 data collection will be the first collection after the incentive auction, which will radically change the ownership of local broadcast television stations. As of yet, no comprehensive analysis of the auction’s impact on diversity in ownership is available and will not be available until the Commission collects the new data.

The adequacy of the FCC’s data collection is also at issue in on-going litigation. In *Prometheus II*, the court remanded the FCC’s definition of “eligible entity” adopted in the 2006 *Quadrennial Review Order* because the Commission failed to provide any data showing that the definition would increase broadcast ownership by minorities and women. *Prometheus Radio Project v. FCC*, 652 F.3d 43, 470 (3d Cir. 2011) (“*Prometheus II*”). The Court ordered the FCC to collect the necessary data and conduct the necessary studies in the 2010 Quadrennial Review. *Id.* at 471-72 & n.42.<sup>3</sup>

In the 2010 *Quadrennial Review NPRM*, however, the FCC acknowledged that “data currently in the record of this proceeding are not complete and are likely insufficient ... to address the concerns raised in *Prometheus II*.” 26 FCC Rcd 17489, 17550 (2011). But the Commission committed to obtaining the data and conducting the necessary research in preparation for the 2014 Quadrennial Review. *Id.*

When the Commission finally issued an order concluding both the 2010 and 2014 quadrennial reviews in August 2016, it still had not obtained the necessary data or conducted the necessary studies. 2014 *Quadrennial Review*, 31 FCC Rcd 9864 (2016). *Prometheus Radio Project* again sought judicial review on the grounds that the Commission had still failed to satisfy this Court’s remands in *Prometheus II* and *Prometheus III* to gather and analyze more data if necessary. Petition for Review, *Prometheus IV*, 3d Cir. No.17-1107. While this litigation is pending, it would be most unwise for the Commission to cut back on its data collection. Indeed, allowing Form 323s to be filed on different dates or less frequently would defeat a primary purposes of the data collection, *i.e.*, to create a series of “snapshots” to assess how changes in the ownership limits have or might affect ownership diversity and to assess whether initiatives designed to increase ownership diversity have been effective.

We are also concerned that NAB at 15 urges the FCC postpone the filing of Form 323 for 2017. See also NAB Request to Suspend December 1, 2017 Ownership Report Filing Deadline, MB Docket Nos. 07-294 & 10-103 (filed July 19, 2017). NAB argues that the Commission

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<sup>1</sup> Media Bureau, *Third Report on Ownership of Commercial Broadcast Stations* at 2 (May 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344821A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344821A1.pdf).

<sup>2</sup> For example, it found that Hispanic/Latino persons owned 62 of 1,285 full power commercial television stations (4.5%), 176 of 3,509 commercial AM stations (5.0%), and 228 of 5,492 FM radio stations (4.2%). Racial minorities owned only 36 (2.6%) of full power commercial television stations, 204 (5.8%) of AM stations and 128 (2.3%) of FM stations. Women owned 102 (7.4%) of full power television stations (7.4%), 314 (8.9%) of AM stations and 446 (8/1%) of FM stations.

<sup>3</sup> In *Prometheus III*, the court remanded again after parties appealed the Commission’s failure to complete the 2010 review, and directed the Commission “to act promptly to bring the eligible entity definition to a close. It must make a final determination as to whether to adopt a new definition. If it needs more data to do so, it must get it.” 824 F.3d 33, 49 (3d Cir. 2016).

should suspend the filing requirement until it remedies problems with integrating the ownership reports with the CDBS filings system into a new licensing database known as LMS. We urge the Commission to promptly address any problems so that the data can be collected on schedule.

## **B. Attribution Rules Should Not be Relaxed**

We also oppose proposals to relax the attribution rules. *See, e.g.*, NAB at 4. Attribution rules determine which entities or individuals have an ownership interest attributed to them for purposes of the ownership limits. Only “attributed owners” are required to file Form 323 and to be listed on applications for renewal and transfer.

Were the Commission to adopt proposals such as raising the threshold for attributing stockholders, raising the threshold for attributing “passive investors,” eliminating the Equity Debt Plus rule, or cutting back on filing requirements for limited partnerships and LLCs, as some have suggested, many owners currently attributed would no longer be attributed. This could allow some entities to substantially increase their broadcast holdings--both within a market and nationally--without any public or FCC scrutiny so long as they kept their interests just below the higher attribution thresholds. This change would amount to an end-run around ownership limits, including the national cap mandated by Congress. Consolidated Appropriations Act, Pub. L. No. 108-199, §629(1), (3) (2004)(“CAA”).

## **C. Public Notice and Opportunity to Comment on Proposed Assignment and Transfers**

We do not oppose updating the FCC’s public notice requirements in theory. It must be done, however, in a way to ensure members of the public actually receive notice and have a meaningful opportunity to participate in the review of license transfers or assignments. In *Revision of the Public Notice Requirements of Section 73.3580*, 20 FCC Rcd 5420 (2005), the Commission proposed to strengthen rules regarding the public notice of transfers or assignments of licenses. Some parties to this letter filed comments at that time. Should the Commission decide to move forward on proposals to update public notice, they urge the Commission to consider these comments. Comments of UCC, *et al.*, *Revision of the Public Notice Requirements of Section 73.3580*, Docket No. 05-6, filed August 1, 2005 and April 5, 2012.

In conclusion, the Commission should not take steps to eliminate or reduce the usefulness of the biennial broadcast ownership reports.

Respectfully submitted,

/s/

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